HEWLETT-PACKARD COMPANY
Intellectual Property Administration
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PATENT APPLICATION

ATTORNEY DOCKET NO. 200309423-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Kemal Guler et al.

Confirmation No.: 3497

Application No.: 10/757,323

Examiner: Clifford B. Madamba

Filing Date: January 14, 2004

Group Art Unit: 3692

Title: SYSTEM AND METHOD FOR COMPARING RESULTS OF MULTIPLE LOT AUCTIONS USING DIFFERENT SEQUENCING RULES

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July 7, 2008.

☒ The fee for filing this Appeal Brief is $510.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month $120	☐ 2nd Month $460	☐ 3rd Month $1050	☐ 4th Month $1640

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of $ 510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

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Date of facsimile: September 8, 2008
Typed Name: Judy H. Chung
Signature:

Respectfully submitted,
Kemal Guler et al.
By:
Ashok K. Mannava
Attorney/Agent for Applicant(s)
Reg No.: 45,301
Date: September 8, 2008
Telephone: (703) 652-3822

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Attorney Docket No.: 200309423-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):	Kemal Guler et al.	**Confirmation No.:**	3497
Serial No.:	10/757,323	**Examiner:**	Clifford B. Madamba
Filed:	January 14, 2004	**Group Art Unit:**	3692
Title:	SYSTEM AND METHOD FOR COMPARING RESULTS OF MULTIPLE LOT AUCTIONS USING DIFFERENT SEQUENCING RULES		

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APPEAL BRIEF - PATENTS

Sir:

This is an Appeal Brief in connection with the decisions of the Examiner in a Final Office Action mailed April 4, 2008, and in connection with the Notice of Appeal filed July 7, 2008. It is respectfully submitted that the present application has been more than twice rejected. Each of the topics required in an Appeal Brief and a Table of Contents are presented herewith and labeled appropriately.

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(1) Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, L.P.

(2) Related Appeals and Interferences

The Appellant is unaware of any appeals or interferences related to this case.

(3) Status of Claims

Claims 1-22 are pending in the present application of which claims 1, 9, 13, and 18 are independent. Claims 1-22 are all rejected. Claims 1-22 are all appealed.

(4) Status of Amendments

No amendment was filed subsequent to the Final Office Action dated April 4, 2008.

(5) Summary of Claimed Subject Matter

It should be understood that the subject matter of independent claims 1, 9, 13, and 18 and dependent claim 19 is supported in at least the following cited sections of the present application. Thus, other sections in the present application may provide the same or additional support as well.

Claim 1. A method of evaluating sequencing rules for a multiple lot auction, comprising:

obtaining a next set of bids from a plurality of simulated bidders; *See* para 25.

simulating the multiple lot auction using the next set of bids and a sequencing rule until simulated bidding on all lots is closed; *See* paras 24, 28-32 and FIG. 2.

simulating the multiple lot auction using a different sequencing rule until bidding on all lots is closed; and *See* para 32 and FIG. 2.

comparing results of the simulated auctions with both sequencing rules, wherein the sequencing rules determine how closing times for accepting any bids are ordered among each of the lots. *See* paras 14, 15 and 32.

Claim 9. A storage medium containing code that can be executed by a processor and, when executed, causes the processor to: *See* para 12 and FIG. 1.

select a first sequencing rule that dictates how multiple lots in a multiple lot auction are to be auctioned; *See* paras 24, 28-32 and FIG. 2.

simulate a multiple lot auction using said first sequencing rule until bidding on all lots is closed; *See* paras 24, 28-32 and FIG. 2.

evaluate results of the auction; *See* para 32.

select a second sequencing rule, simulate the multiple lot auction using said second sequencing rule until simulated bidding on all lots is closed, and evaluate results of the auction, wherein the first and second sequencing rules determine how closing times for accepting any bids are ordered among each lot of the multiple lot auction; and *See* paras 24, 28-32 and FIG. 2.

determine a metric for each simulated auction. *See* para 32.

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Claim 13. A system, comprising:

a processor; and *See* para 12 and FIG. 1.

storage coupled to the processor and containing an application that is executable by the processor; *See* para 12 and FIG. 1.

wherein, when executed, the application causes the processor to simulate a multiple lot auction using a plurality of sequencing rules and determine a metric associated with each simulated multiple lot auction, the metric usable to evaluate results of the simulated multiple lot auction, wherein the plurality of sequencing rules determine how closing times for accepting any bids are ordered among each of lot of the multiple lot auction. *See* paras 24, 28-32 and FIG. 2.

Claim 18. A system, comprising:

means for simulating bids in a simulated multiple lot auction; *See* processor 12 in FIG. 1, and paras 24, 28-32 and FIG. 2.

means for selecting a bid from the simulated bids for each of a plurality of lots in the multiple lot auction; *See* processor 12 in FIG. 1, and paras 24, 28-32 and FIG. 2.

means for sequencing bidding on each of the plurality of lots in accordance with a first sequencing rule, wherein the first sequencing rule determines how closing times for accepting any bids are ordered among each of the lots; and *See* processor 12 in FIG. 1, and paras 24, 28-32 and FIG. 2.

means for determining a first metric associated with the simulated multiple lot auction. *See* processor 12 in FIG. 1, and paras 24, 28-32 and FIG. 2.

Claim 19. The system of claim 18 further comprising means for simulating the multiple lot auction using a second sequencing rule and means for determining a second metric associated with the simulated multiple lot auction when using the second sequencing rule. *See* processor 12 in FIG. 1, and paras 24, 28-32 and FIG. 2.

(6) Grounds of Rejection to be Reviewed on Appeal

A. Claims 1-2 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker et., Using Transaction Data for the Design of Sequential, Multi-Unit Online Auctions, University of Rochester, William E. Simon Graduate School of Business Administration, Computer and Information Working Paper Series No. CIS 00-03, October 2001 ("Pinker"), in view of Heimermann, U.S. 7,110,976 ("Heimermann"), and further in view of Wurman et al., Specifying Rules for Electronic Auctions, July 11, 2002 ("Wurman").

B. Claims 3-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Heimermann, in view of Wurman, and further in view of Dumas et al., A Probabilistic Approach to Automated Bidding in Alternative Auctions, International World Wide Web Conference, ACM Press, 2002, pg. 99-108, ("Dumas").

C. Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Heimermann, in view of Wurman, and further in view of Jarvis, U.S. Pub 2004/0006503 ("Jarvis").

D. Claims 9-13, 18-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, and further in view of Jarvis.

E. Claims 14, 16-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, in view of Jarvis, in view of Dumas, and further in view of Cooper U.S. 5,809, 282 ("Cooper").

F. Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, in view of Jarvis, in view of Dumas.

G. Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, in further in view of Jarvis, in view of Heimermann.

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(7) Arguments

Case Law and Test For 103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007):

> "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

> (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference

teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Furthermore, as set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385.

If the above-identified criteria and rationales are not met, then the cited references fail to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited references.

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A. The rejection of claims 1-2 under 35 U.S.C. §103(a) as being unpatentable over Pinker in view of Heimermann in further view if Wurman should be reversed at least for failure to teach or suggest all the features of independent claim 1.

Independent claim 1 recites simulating the multiple lot auction using a sequencing rule, and also recites simulating the multiple lot auction using a different sequencing rule, wherein the sequencing rules determine how closing times are ordered among each of the lots.

Pinker fails to teach or suggest two different sequencing rules. The rejection alleges Pinker discloses two different sequencing rules on page 10 and on page 2. However, on page 2, paragraph 1, Pinker discloses multiple, separate, sequential auctions. Page 9, paragraphs 2 and 3 of Pinker also disclose multiple, separate, sequential auctions. Thus, Pinker only discloses a single sequencing rule, which is that each auction is run separately and consecutively. As described in the first paragraph of page 10, Pinker discloses determining the optimal number of auctions and the optimal number of units to be offered in each auction. However, the sequencing rule remains the same, which is that each auction is run consecutively. Thus, Pinker fails to teach or suggest simulating using two different sequencing rules.

The rejection of claim 1 correctly states that Pinker does not explicitly disclose "wherein the sequencing rules determine how closing times are ordered among each of the lots", but then alleges Wurman makes this teaching on page 11 paragraph 6 and page 12, paragraphs 1-3. Page 12, paragraph 2 specifies that "the auction design must specify the logical conditions that close the auctions. Paragraph 3 then indicates that the choices controlling timing seem relatively minor but they can have a tremendous impact on the auction. Thus, Wurman simply discloses

that an auction design should specify a rule specifying closing conditions. Pinker also does this. As described above, Pinker discloses a single sequencing rule. However, neither Wurman nor Pinker teach or suggest using different sequencing rules to simulate an auction. Heimermann, which was cited in the rejection as allegedly disclosing the claimed comparing of simulating auctions, also fails to teach or suggest using different sequencing rules to simulate an auction.

Furthermore, it would not have been obvious to one of ordinary skill in the art to modify Pinker to simulate different sequencing rules. The sophisticated modeling disclosed on pages 9-13 of Pinker only considers varying the number of auctions and the number of units offered in each auction. It would not be obvious to change the sophisticated modeling of Pinker to account for different sequencing rules. As stated in Wurman, controlling timing seems relatively minor but can have a tremendous impact on the auction. It is unclear how the modeling of Pinker can be modified to account for the tremendous impact of using different timing rules for an auction. Wurman certainly does not disclose how using different sequencing rules can be modeled, especially in conjunction with the sophisticated modeling of Pinker that considers different number of auctions and units per auction.

For at least these reasons, the rejection of claims 1-2 should be reversed.

B. The rejection of claims 9-13 and 18-21 under 35 U.S.C. §103(a) as being unpatentable over Pinker in view of Wurman in further view of Jarvis should be reversed at least for failure to teach all the features of independent claims 9, 13, 18 and dependent claim 19.

Independent claim 9 recites two sequencing rules for simulating the multiple lot auction. Independent claim 13 recites simulating a multiple lot auction using a plurality of sequencing rules. Independent claim 18 and dependent claim 19 recite first and second sequencing rules.

As described above with respect to claim 1, Pinker fails to teach or suggest two different sequencing rules. The rejection alleges Pinker discloses two different sequencing rules on page 10 and on page 2. However, on page 2, paragraph 1, Pinker discloses multiple, separate, sequential auctions. Page 9, paragraphs 2 and 3 of Pinker also disclose multiple, separate, sequential auctions. Thus, Pinker only discloses a single sequencing rule, which is that each auction is run separately and consecutively. As described in the first paragraph of page 10, Pinker discloses determining the optimal number of auctions and the optimal number of units to be offered in each auction. However, the sequencing rule remains the same, which is that each auction is run consecutively. Thus, Pinker fails to teach or suggest simulating using two different sequencing rules.

The rejection of independent claims 9, 13 and 18 correctly states that Pinker does not explicitly disclose "wherein the sequencing rules determine how closing times are ordered among each of the lots", but then alleges Wurman makes this teaching on page 11 paragraph 6 and page 12, paragraphs 1-3. Page 12, paragraph 2 specifies that "the auction design must specify the logical conditions that close the auctions. Paragraph 3 then indicates that the choices controlling timing seem relatively minor but they can have a tremendous impact on the auction. Thus, Wurman simply discloses that an auction design should specify a rule specifying closing conditions. Pinker also does this. As described above, Pinker discloses a single sequencing rule.

However, neither Wurman nor Pinker teach or suggest using different sequencing rules to simulate an auction. Jarvis, which was cited in the rejection as allegedly disclosing the claimed determination of metrics for each simulated auction, also fails to teach or suggest using different sequencing rules to simulate an auction.

Furthermore, it would not have been obvious to one of ordinary skill in the art to modify Pinker to simulate different sequencing rules. The sophisticated modeling disclosed on pages 9-13 of Pinker only considers varying the number of auctions and the number of units offered in each auction. It would not be obvious to change the sophisticated modeling of Pinker to account for different sequencing rules. As stated in Wurman, controlling timing seems relatively minor but can have a tremendous impact on the auction. It is unclear how the modeling of Pinker can be modified to account for the tremendous impact of using different timing rules for an auction. Wurman certainly does not disclose how using different sequencing rules can be modeled, especially in conjunction with the sophisticated modeling of Pinker that considers different number of auctions and units per auction.

For at least these reasons, the rejection of claims 9-13 and 18-21 should be reversed.

C. The rejections of dependent claims 3-7, 8, 14-17 and 22 should be reversed for at least the reasons the rejections of their respective independent claims should be reversed.

Claims 3-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Heimermann, in view of Wurman, and further in view of Dumas.

Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Heimermann, in view of Wurman, and further in view of Jarvis.

Claims 14, 16-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, in view of Jarvis, in view of Dumas, and further in view of Cooper.

Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, in view of Jarvis, in view of Dumas.

Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pinker, in view of Wurman, in further in view of Jarvis, in view of Heimermann.

The rejections of dependent claims 3-7, 8, 14-17 and 22 should be reversed for at least the reasons the rejections of their respective independent claims should be reversed.

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(8) Conclusion

For at least the reasons given above, the rejection of claims 1-22 described above should be reversed and these claims allowed.

Please grant any required extensions of time and charge any fees due in connection with this Appeal Brief to deposit account no. 08-2025.

Respectfully submitted,

Dated: September 8, 2008 By _____
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(9) Claim Appendix

1. (Previously Presented) A method of evaluating sequencing rules for a multiple lot auction, comprising:

obtaining a next set of bids from a plurality of simulated bidders;

simulating the multiple lot auction using the next set of bids and a sequencing rule until simulated bidding on all lots is closed;

simulating the multiple lot auction using a different sequencing rule until bidding on all lots is closed; and

comparing results of the simulated auctions with both sequencing rules, wherein the sequencing rules determine how closing times for accepting any bids are ordered among each of the lots.

2. (Original) The method of claim 1 wherein simulating the multiple lot auction with each sequencing rule comprises simulating a multiple lot, reverse auction.

3. (Original) The method of claim 1 wherein simulating the multiple lot auction with each sequencing rule further comprises processing a bid from the next set of bids.

4. (Original) The method of claim 3 wherein processing a bid from the next set of bids comprises at least one act selected from a group consisting of recording the bid, resetting a closing time, and permitting each simulated bidder to be informed of the bid being processed.

5. (Original) The method of claim 1 wherein obtaining the next set of bids comprises determining, for each of a plurality of simulated bidders, whether the bidder is to submit a bid, when the bidder is to submit a bid, and an amount of the bid.

6. (Original) The method of claim 5 wherein, if a simulated bidder submits a bid, the bid is submitted according to a random time interval.

7. (Original) The method of claim 1 wherein simulating the multiple lot auction comprises simulating auction time.

8. (Original) The method of claim 1 wherein comparing results comprises, for each simulated auction, determining a metric selected from a group consisting of total procurement cost of all of the lots in the multiple lot auction, average procurement cost per lot, and mean procurement cost per lot.

9. (Previously Presented) A storage medium containing code that can be executed by a processor and, when executed, causes the processor to:

select a first sequencing rule that dictates how multiple lots in a multiple lot auction are to be auctioned;

simulate a multiple lot auction using said first sequencing rule until bidding on all lots is closed;

evaluate results of the auction;

select a second sequencing rule, simulate the multiple lot auction using said second sequencing rule until simulated bidding on all lots is closed, and evaluate results of the auction, wherein the first and second sequencing rules determine how closing times for accepting any bids are ordered among each lot of the multiple lot auction; and

determine a metric for each simulated auction.

10. (Original) The storage medium of claim 9 wherein the metric comprises a metric selected from a group consisting of total cost of all of the lots in the multiple lot auction, average cost per lot, and mean cost per lot.

11. (Original) The storage medium of claim 9 wherein the code further causes the processor to compare the metrics from the simulated auctions.

12. (Original) The storage medium of claim 9 wherein the code further causes the processor to model behavior of a plurality of simulated bidders.

13. (Previously Presented) A system, comprising:

a processor; and

storage coupled to the processor and containing an application that is executable by the processor;

wherein, when executed, the application causes the processor to simulate a multiple lot auction using a plurality of sequencing rules and determine a metric associated with each simulated multiple lot auction, the metric usable to evaluate results of the simulated multiple lot auction, wherein the plurality of sequencing rules determine how closing times for accepting any bids are ordered among each of lot of the multiple lot auction.

14. (Original) The system of claim 13 wherein the processor prevents a simulated bidder from winning two lots that are incompatible.

15. (Original) The system of claim 13 wherein the processor determines, for each lot, an expected utility gain value for each of a plurality of simulated bidders.

16. (Original) The system of claim 15 wherein the processor eliminates lots from bidding by a simulated bidder if the expected utility gain value for that lot and bidder is less than a threshold.

17. (Original) The system of clam 15 wherein the processor eliminates lots from bidding by a simulated bidder if the expected utility gain value for that lot and bidder is less than a maximum value.

18. (Previously Presented) A system, comprising:

means for simulating bids in a simulated multiple lot auction;

means for selecting a bid from the simulated bids for each of a plurality of lots in the multiple lot auction;

means for sequencing bidding on each of the plurality of lots in accordance with a first sequencing rule, wherein the first sequencing rule determines how closing times for accepting any bids are ordered among each of the lots; and

means for determining a first metric associated with the simulated multiple lot auction.

19. (Original) The system of claim 18 further comprising means for simulating the multiple lot auction using a second sequencing rule and means for determining a second metric associated with the simulated multiple lot auction when using the second sequencing rule.

20. (Original) The system of claim 19 further comprising means for comparing the first and second metrics.

21. (Original) The system of claim 18 further comprising means for simulating time in the multiple lot auction.

22. (Original) The system of claim 18 wherein the multiple lot auction comprises a reverse auction.

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(10) Evidence Appendix

None.

(11) Related Proceedings Appendix

None.